IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 699 of 1999
In
SPECIAL CIVIL APPLICATION No. 7651 of 1998

with
LETTERS PATENT APPEAL No.608 of 1999
in
SPECIAL CIVIL APPLICATION No.7651 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

GROUP GENERAL MANAGER (P) & 1 - Appellant(s)
Versus
GUJARAT PETROLEUM EMPLOYEES UNION & 11 – Defendant(s)

==========

Appearance :
Mr.Thakar for M/S TRIVEDI & GUPTA for Petitioner No(s).: 1,2.

MR TR MISHRA for Respondent No(s).: 1.
SERVED BY RPAD - (R) for Respondent No(s).: 2, 5,11.
RULE SERVED for Respondent No(s).: 3, 4, 6, 7, 8, 9, 10,12.

LPA No.608 of 1999

Mr.R.K. Mishra for appellants.
==========

Date : 03/08/2005

COMMON ORAL JUDGMENT:(Per:HONOURABLE MR.JUSTICE R.S.GARG)

1. Letters Patent Appeal No.699 of 1999 is at the instance of Oil & Natural Gas Corporation Limited (hereinafter referred to as "**ONGC)**, while Letters Patent Appeal No.608 of 1999 is at the instance of the contractors who were providing labourers to the ONGC.

2. The Petroleum Employees Union has filed Special Civil Application No.7651 of 1998 seeking the reliefs that a writ or a direction in the nature of mandamus, etc. be issued against the respondent-ONGC and original respondents no.3, 4 and 7 to 13 be asked to pay minimum bonus to the employees who are working for more than three years continuously and uninterruptedly. They also made a prayer that the respondents be asked to supply safety kits to the labourers who are working on rigs, drill-sites, installations and safety shoes to the drivers which is

a statutory requirement. After hearing the parties, the learned Single Judge refused to grant the second relief, but however, observed that the workman is entitled to bonus under the law, it directed the contractors (original respondents no.7 to 13) to make payment and further observed that in case they fail to make payment the amount shall be paid by the ONGC. It was also observed that this direction was without prejudice to the inter-se rights and obligations of the principal employer and the contractors. Being aggrieved by these directions, the contractors, so also the principal employer-ONGC have filed these Letters Patent Appeals. It was submitted jointly by the learned counsel for the appellants that as there was no agreement to make payment of bonus, no direction could be issued to pay bonus to the workmen. Learned counsel for the ONGC submitted that respondents no.3 and 4-the present appellant-ONGC could not be held liable to make payment of bonus in terms of section 21 of the Contract Labour (Regulation & Abolition) Act, (hereinafter referred to as “the **Act**) and such a direction deserves to be quashed. Learned counsel for the contractors also submitted

that they being cooperative society a direction for payment of the bonus could not be issued against them. He also submits that they were simply providing labour and were disbursing the amount to the labour which was received from the principal employer. Learned counsel for the respondents in each of the case submitted that there being contract to the contrary amongst the ONGC and the contractors to make payment of the bonus, the liability cannot be denied at this stage. He also submits that the fact that labourers were entitled to bonus was not disputed by the present appellants before the learned Single Judge, therefore, the labourers are entitled to bonus and the equities may be settled amongst the principal employer and the contractors.

3. For proper appreciation of the arguments of the parties we may have to refer to the letter dated 24.01.1997 (Annexure 'B' to the petition) issued by the ONGC to the contractors. It is clearly mentioned in the said letter that as per clause 9 of the agreement the contractors were required to pay bonus to their shareholders/ workers. The letter directs the contractors to produce necessary proof of payment

of bonus to their workers. It also directs that if bonus was not paid the same be paid to the workmen as applicable immediately and such compliance report be submitted within seven days. This agreement between the ONGC and the contractors would certainly be a contract to the contrary and if cooperative society in their capacity as contractor entered into an agreement with open eyes which had a stipulation that bonus will have to be paid, then they cannot avoid liability nor can they be allowed to say that the workman is not entitled to the bonus. The learned Single Judge has observed that the respondents are liable to make payment of the bonus in terms of section 21 of the Act. It had further observed that in the first instance it will be the duty of respondents no.7 to 13 (contractors) to discharge liability and in case of their failure it shall be the liability of respondents no.3 and 4 to discharge their duty in terms of section 21 of the Act. It is to be seen from the judgement of the learned Single Judge that it has not fastened liability on a particular set of the appellants, it has simply observed that this payment shall be without prejudice to the inter se rights and

obligations of the principal employer and the contractor. If either of the party after making payment feels that they are not liable to make payment, but the other party was answerable to make payment, then they can certainly take judicial steps/ legal steps against the other party for recovery of the amount which they had already paid. In a clash of titans or fight of the two bulls the poor workmen should not be allowed to suffer. We find no reason to interfere in the appeals. Both the Letters Patent Appeals are dismissed. No costs.

(R.S. GARG, J.)

(RAVI R. TRIPATHI, J.)

karim